

2001 DEC 13 P 2 43

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
CHAIRMAN

JIM IRVIN  
COMMISSIONER

MARC SPITZER  
COMMISSIONER

Arizona Corporation Commission

DOCKETED

DEC 13 2001

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*mc*

APPLICATION OF ARIZONA UTILITY  
SUPPLY AND SERVICES, LLC FOR A  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO PROVIDE  
SEWER SERVICE TO PORTIONS OF  
PINAL COUNTY, ARIZONA.

Docket No: SW-04002A-01-0228

IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES, L.L.C. DBA  
JOHNSON UTILITIES COMPANY  
FOR AN EXTENSION OF ITS  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO PROVIDE  
WASTEWATER SERVICE  
TO THE PUBLIC IN THE DESCRIBED  
AREA IN PINAL COUNTY, ARIZONA.

Docket No: WS-02987A-01-0295

**JOHNSON UTILITIES'  
EXCEPTIONS TO  
RECOMMENDED OPINION  
AND ORDER**

**I. INTRODUCTION**

This proceeding presents two issues for decision by the Arizona Corporation  
Commission ("Commission").

1 First, whether to award a wastewater certificate to Johnson Utilities that will allow  
2 Johnson Utilities to serve as a regional wastewater service provider in northern Pinal  
3 County.  
4

5 Second, whether to award a wastewater certificate for a small portion of northern  
6 Pinal County to AUSS, even though AUSS has constructed facilities, received unapproved  
7 payments from developers, and served customers all before receiving appropriate  
8 regulatory approvals, including a Certificate of Convenience & Necessity ("CC&N"),  
9 from the Commission.  
10

11 Johnson Utilities respectfully takes exception to the Recommended Opinion and  
12 Order ("RO") denying Johnson Utilities the right to serve the requested area and granting  
13 AUSS' application to serve a portion of Johnson Utilities' requested area for the following  
14 reasons:  
15

16 1. The RO does not give sufficient weight to the public benefits arising from  
17 Johnson Utilities' service as a regional wastewater provider.  
18

19 2. The RO does not give sufficient weight to AUSS' circumvention of the  
20 regulatory process. In fact, the RO effectively rewards AUSS for building a system and  
21 serving customers prior to receiving the necessary regulatory approvals.

22 Johnson Utilities respectfully requests that its Application for a CC&N be granted  
23 and that AUSS' Application be denied. In the alternative, Johnson Utilities requests that  
24 this case be remanded to the Administrative Law Judge so that all of the concerns about  
25 AUSS can be fully investigated and addressed in the RO.  
26

1 In considering Johnson Utilities' exceptions, the Commission should keep in mind  
2 the following:

3 1. Pinal County prefers a large, regional wastewater provider in this portion of  
4 northern Pinal County. Johnson Utilities is the best positioned company to serve on a  
5 regional basis.  
6

7 2. There will be economies of scale from a regional wastewater service  
8 provider that will benefit all customers in the area and encourage development.  
9

10 3. Johnson Utilities' Application was filed in response to requests from  
11 certificated water companies in the area which believe it is important to have a regional  
12 wastewater provider.

13 4. The Commission already has established that a need for utility services in  
14 the requested area exists by granting certificates of convenience and necessity for water  
15 service. If there is need for a water service provider, there is need for a wastewater service  
16 provider, unless the Commission wishes to foster the continued use of private septic  
17 systems and package plants owned by developers or homeowners' associations.  
18

19 5. AUSS has acted in contravention of rules and regulations, including:  
20

21 • Admitting to the Arizona Department of Environmental Quality  
22 ("ADEQ") and the Commission Staff that it actually owns public service facilities even  
23 though it does not have a CC&N, contrary to the position it now takes in this proceeding.  
24  
25  
26

1                   •       Providing service to Cambria residents purportedly through the Links  
2 Homeowners' Association, formed and controlled by owners of AUSS, even though  
3 Cambria residents are not members of the homeowners' association.

4                   •       Building a wastewater treatment plant without the necessary ADEQ  
5 and CAAG approvals.

6                   •       Collecting almost \$200,000 in hookup fees prior to receiving a  
7 CC&N and prior to having a tariff approved by the Commission and receiving millions of  
8 dollars in plant investment from developers on an alleged "handshake" deal.

9                   These events raise serious concerns about AUSS' fitness to serve. *See* December 5,  
10 2001 Resolution of the Pinal County Board of Supervisors attached at Tab A.

11  
12  
13 **II.     GRANTING JOHNSON UTILITIES' EXTENSION WILL SERVE THE**  
14 **PUBLIC INTEREST**

15       A.     The Commission Has Determined that Public Need Exists

16                   Johnson Utilities seeks to serve as a regional provider of wastewater service  
17 in northern Pinal County and the Queen Creek area in Maricopa County. *See* Hearing  
18 Exhibits J-8 and J-9. The overwhelming majority of the area requested in this Application  
19 is currently certificated to water utilities, including Queen Creek Water Company, H2O,  
20 Inc., and Diversified Utilities. *See* Hearing Exhibit J-5. Through those certifications, the  
21 Commission has determined that a public need exists and that certification of a water  
22 utility is in the public interest. *See* Fisher Cross-Ex., Hearing Transcript ("Transcript") at  
23  
24  
25  
26

1 332. The same need exists for wastewater service, and the expansion of Johnson Utilities'  
2 CC&N to serve the requested areas will serve this need and foster the public interest.

3  
4 The RO concludes that, because Johnson Utilities has not submitted requests  
5 for service from developers or prospective customers in the requested areas, that a public  
6 need and necessity has not been established. RO, at 14:12-18. A request for service,  
7 however, is not a legal prerequisite for the granting of an extension. Rather, the  
8 controlling factor in determining whether to grant an extension is whether the extension is  
9 in the "public interest." *See James P. Paul Water Co. v. Ariz. Corp. Comm'n*, 137 Ariz.  
10 426, 429, 671 P.2d 404, 407 (1983).

11 B. Longer-Term Planning Is in the Public Interest

12 Because Johnson Utilities is certificated for and has facilities in northern Pinal  
13 County, granting this extension will allow Johnson Utilities to properly size its existing  
14 and proposed system to most effectively serve this area. *See* Tompsett Direct, Transcript  
15 at 150. Such longer-term planning will lead to economies of scale that will benefit  
16 Johnson Utilities' existing customers and future customers in the subject areas. *See*  
17 Tompsett Direct, Transcript at 150; Johnson Direct, Transcript at 212-13. Otherwise,  
18 Johnson Utilities will be forced to construct its system in a piecemeal fashion, which  
19 inevitably leads to additional costs for ratepayers. *See* Johnson Direct, Transcript at 212,  
20 215.

21 In addition, as stated by Mr. Paul Gardner at the hearing, the failure to foster  
22 longer-term planning has led and will continue to lead to the proliferation of septic  
23 systems and small package plants in these areas. *See* Gardner Direct, Transcript at 186-87.  
24 Because septic systems are prone to neglect, they present a great risk to the groundwater  
25 supply. *See* Tompsett Direct, Transcript at 138; Gardner Direct, Transcript at 186-87.  
26 Inevitably, septic systems contaminate the water supply and result in additional costs to

1 water utilities. *See* Gardner Direct, Transcript at 186. For these reasons, ADEQ and Pinal  
2 County have discouraged their use. *See* Tompsett Direct, Transcript at 138.

3           The long-term use of small package plants also presents a serious danger to  
4 the water supply and a burden for regulatory agencies. *See* Gardner Direct, Transcript at  
5 187; Johnson Direct, Transcript at 213. Although developers may prefer smaller sewer  
6 systems, which allow development to proceed more quickly at less cost, the use of these  
7 smaller systems inevitably leads to problems. *See* Gardner Direct, Transcript at 187. In  
8 numerous instances, after a development has completed and a homeowners' association  
9 has taken control, these smaller systems have fallen into disrepair, resulting in costly  
10 problems for regulatory agencies and health risks to consumers. *See* Gardner Direct,  
11 Transcript at 187; Johnson Direct, Transcript at 213. These problems have caused Pinal  
12 County to express a policy disfavoring the long-term use of small sewer systems and a  
13 preference for regional providers, such as Johnson Utilities. *See* Hearing Exhibit J-12.  
14 These same problems have caused the Town of Queen Creek to plan long-term for a  
15 twenty-year build-out and to run large lines up to ten miles away to handle its wastewater.  
16 *See* Gardner Direct, Transcript at 188-89.

17           Clearly, in the areas covered by Johnson Utilities' Application, the public  
18 interest is served by a regional provider of wastewater service that will design its system to  
19 utilize large, regional treatment plants and that has the financial strength and technical  
20 know-how to make such a regional system a reality.

21           C.     Johnson Utilities Is Financially and Technically Able to Serve the Requested  
22                    Areas

23           It is undisputed that Johnson Utilities has sufficient financial backing to  
24 design and to construct a wastewater system to effectively serve the requested areas. *See*  
25 Fisher Cross-Ex., Transcript at 333-34. Although development in portions of the  
26 requested area may not commence immediately, the Commission has determined that a

1 need for water service exists in these areas. The same need exists for wastewater service,  
2 and Johnson Utilities is the only well-financed, experienced utility currently serving in the  
3 area that can construct a regional system to provide wastewater service to these areas.

4 D. Johnson Utilities Did Provide the Necessary Information to Staff

5 The RO concludes that Johnson's Application should be denied, in part, because of  
6 Johnson Utilities' "failure to cooperate with Staff by providing required information that  
7 would enable Staff to analyze the application." RO, at 14.

8 Johnson Utilities respectfully disagrees. First, Johnson Utilities notes that Staff  
9 deemed Johnson Utilities' Application administratively complete on May 23, 2001.

10 Second, Johnson Utilities provided information to Staff in response to Staff's data  
11 requests. This information included Johnson Utilities' CAAG 208 Water Quality Plan  
12 Amendment No.4,<sup>1</sup> which sets forth projections for construction in the requested area.  
13 Johnson Utilities also explained in these filings that it did not have precise engineering  
14 specifications, because, unlike AUSS, it had not commenced construction prior to receipt  
15 of its CC&N. Furthermore, following submission of responses to Staff's data requests,  
16 Johnson Utilities confirmed with Staff that its responses were sufficient and offered to  
17 meet with Staff to address any further issues. Staff indicated that such a meeting was  
18 unnecessary.

19 Third, in addition to the written materials provided to Staff, Johnson Utilities'  
20 representatives accompanied Staff on a visit to the requested areas and provided additional  
21 information during this visit, including showing Staff the sites of its existing and proposed  
22 treatment plants.

23 Although Johnson did offer further explanation of its plans at the hearing, Johnson  
24 had stated throughout the process that it planned to do so in recognition of the fluidity of

25 \_\_\_\_\_  
26 <sup>1</sup> The Central Arizona Association of Governments approved Johnson Utilities' 208 Water  
Quality Plan Amendment No.4 on October 1, 2001.

1 the process, the lack of certainty with regard to development in the area, and the  
2 unnecessary expense of preparing precise engineering plans until a CC&N is received.  
3 See Johnson's Response to Staff Report at 3. In light of the information provided to Staff,  
4 Johnson respectfully disagrees with the RO's conclusion that it failed to cooperate.

5 E. Acrimony

6 Johnson Utilities also respectfully disagrees with the RO's reliance upon Johnson's  
7 alleged "acrimony" as a basis for the denial. RO, at 14. Johnson's representatives clearly  
8 made regrettable statements on the record. However, as recognized by the Administrative  
9 Law Judge, these statements arose out of Johnson Utilities' frustration with the contents of  
10 the Staff Report and the tone and line of questioning from opposing counsel during the  
11 proceedings. See, e.g., ALJ Stern, Transcript at 249, 250-51 ("Now, if you want to go  
12 line by line through this, I'm sure we could, but I think it would draw out this hearing to  
13 an extended period of time that nobody believed would be possible"), 274 ("Excuse me,  
14 Mr. Keogh. At least he was trying to answer, then you cut him off."), 275, 280, 293 ("Mr.  
15 Keogh, I'm going to caution you, I'm having a hard time finding all of this."), 299-300,  
16 301 ("Mr. Johnson, you know, I understand you're frustrated."). Furthermore, Johnson  
17 Utilities' representatives apologized on the record for inappropriate statements made  
18 during the hearing and have done so numerous times following the hearing. See Johnson  
19 Direct, Transcript at 266. Accordingly, in determining whether granting Johnson Utilities'  
20 Application is in the public interest, any alleged "acrimony" should not be a factor.

21 F. ADEQ Violations

22 The RO further cites Johnson Utilities' past violations of ADEQ regulations as a  
23 basis for denial. RO, at 14:15-16. As set forth at the hearing on this matter (as well as in  
24 previous dockets, see Docket No. WS-02987A-99-0583 *et al.*), Johnson Utilities  
25 acknowledges that its operations, particularly its early operations, encountered problems  
26 with ADEQ. Johnson Utilities resolved these violations, however, in a timely and



1 responsible manner. Indeed, Staff acknowledges in its Staff Report that Johnson Utilities  
2 is in compliance with ADEQ rules. *See* Staff Report at 5.

3 Finally, Johnson Utilities wishes to clarify a misunderstanding regarding its alleged  
4 failure to publish certain notices required by ADEQ. RO, at 12. At the hearing, Mr.  
5 Johnson, misunderstanding the question, did state that Johnson Utilities failed to publish  
6 these notices. However, as set forth at Tab B, Johnson Utilities did publish notice as  
7 required by ADEQ.

8 G. The Use of Package Plants

9 The RO cites to Johnson Utilities' use of package plants to serve the area and Pinal  
10 County's disfavor for such plants. RO, at 11. As set forth at the hearing, Johnson could  
11 use its package plants as a temporary measure to serve certain areas until larger, regional  
12 plants can be constructed. *See* Johnson Re-Direct, Transcript at 321. AUSS plans to use  
13 package plants as well. Accordingly, this factor should not favor either party.

14 **III. AUSS SHOULD NOT BE GRANTED A CC&N**

15 AUSS' actions leading up to and during this CC&N process evidence a company  
16 that seeks to establish a service area and encourage unregulated development by  
17 circumventing the proper regulatory process. AUSS, while hiding behind the veil of  
18 homeowners' association, has operated as a de facto public service corporation  
19 constructing facilities, applying for 208 authority, serving sewer customers, requiring and  
20 accepting hookup fees and holding itself out to the Commission, the Department of Real  
21 Estate and ADEQ as a public service provider. This behavior should not be rewarded.

22 The Commission should not ignore these practices by AUSS because: 1) rewarding  
23 these practices will set a precedent that could be exploited in future CC&N proceedings;  
24 and 2) condoning these practices will directly injure the legitimate, legal efforts of Johnson  
25 Utilities to secure a CC&N for the competing area.  
26

1           A.     AUSS Is a Public Service Corporation Operating Without Commisison  
2                     Approval

3           Statutory authority strictly prohibits a public service corporation from constructing  
4           plant or facilities prior to receipt of a CC&N. A.R.S. § 40-281(A). In a thinly veiled  
5           attempt to avoid Commission regulation, AUSS, acting in concert with several developers,  
6           has constructed and acquired rights to sewage treatment facilities and has commenced  
7           service to homeowners under the guise of serving solely as an operator hired by the Links  
8           Homeowners' Association to operate the Links wastewater treatment plant ("Links  
9           WWTP"). It should be noted that the Links Homeowners' Association is controlled by  
10          Mr. Kohner, who also owns AUSS along with Mr. Lee and is not a homeowner at the  
11          Links. Although AUSS claims only to be the operator of the Links' sewer system, the  
12          facts are clear that AUSS has been and continues to be a public service corporation  
13          operating without Commission approval.<sup>2</sup>

14               1.     *AUSS has charged "hookup fees" to developers in excess of \$183,000.*

15           Although AUSS claims that it will "refund" any hookup fees already  
16           collected, AUSS did not introduce any evidence that shows that AUSS has the financial  
17           resources to refund the money. To the contrary, AUSS claims that it has only one client  
18           for which it works-the Links. Pursuant to the purchase contract, AUSS appears to be  
19           operating the Links system for free in exchange for the right to purchase the facility for  
20           \$10.

21               2.     *AUSS has operated the Links as a public facility without Commission*  
22                     *approval.*

23           Ownership of the Links WWTP by the Links Homeowners' Association  
24           does not allow the Links to offer its services to those outside its development. AUSS

25           <sup>2</sup> The citations to the record supporting the following factual statements are set forth in  
26           Johnson Utilities' Application for Order Prohibiting AUSS from Constructing a Utility  
          Plant and Offering a Public Service, a copy of which is attached at Tab C.

1 presently provides service to the Cambria development through the Links WWTP without  
2 a CC&N.

3 3. *AUSS has asserted to ADEQ that it is the owner of the Links WWTP.*

4 In written correspondence to ADEQ on April 16, 2001, Maurice Lee,  
5 manager and fifty percent owner of AUSS stated to ADEQ: "Please be advised that  
6 Arizona Utility Supply & Service LLC has taken over and has been assigned the  
7 ownership of the Links at Ocotillo Wastewater Treatment Plant as well as the lift station  
8 under the above captioned file number."

9 4. *AUSS has asserted to CAAG that it is the owner of the Cambria and*  
10 *Castlegate Wastewater Treatment Plants.*

11 It its 208 application, AUSS asserts repeatedly that it is the owner of the  
12 Cambria and Castlegate WWTPs.

13 5. *Staff has testified that it believes AUSS to be the owner of the Links and*  
14 *Cambria WWTPs. Additionally, the Staff Report clearly treats AUSS as a public service*  
15 *corporation.*

16 6. *AUSS has held itself out to developers as a service provider.*

17 John Poulsen testified at the hearing that at the time he met with AUSS he  
18 considered "AUSS to be a provider of sewer to the area." Poulsen Cross-Ex., Transcript at  
19 31.

B. AUSS in Conjunction with Developers Worked to Avoid the Law in an Effort to Expedite the Development of the Contested Area.<sup>3</sup>

1. *AUSS has operated the Links WWTP in violation of its 208 planning requirements.*

The Links 208 approval does not envision nor approve the facility accepting sewage from off-site sources. As such, the pipeline connecting the Links WWTP to the Cambria development is beyond the scope of the 208 and therefore, in violation of 208 requirements. Additionally, in its reply to Johnson Utilities' Application for Order, AUSS asserts that "[c]ertification already exists for the Links WWTP and the subsequent expansion thereof (to include the Cambria WWTP)." This statement again clearly shows how confused AUSS has become by its own actions. The Links 208 document envisions the potential expansion of the Links to fulfill the needs of the Links subdivision. Nothing in the Links 208 envisions expansion outside of the Links, let alone expansion that includes the Cambria WWTP. The acceptance of sewage from Cambria by the Links is in violation of the Links 208.<sup>4</sup>

<sup>3</sup> The RO gives significant weight to the developer requests for service. While such requests can be an important factor, the RO overlooks one very important aspect of these particular requests for service. The developers that are requesting service from AUSS are the ones working in conjunction with AUSS to circumvent the system. The "need" evidenced is a past need – a need created by the failure to work within the proper regulatory framework.

<sup>4</sup> Apparently, confused by its own dealings, AUSS asserts that the Links 208 approved a capacity of 750,000 gal./day to be increased to 1.5 million gal./day. However, the Links was permitted by ADEQ for 37,500 gal./day with a CAAG 208 approval of 75,000 gal./day, far less than that required to serve the Cambria development.

- 1           2.     *AUSS appears to have assisted developers in circumventing DRE*  
2                     *requirements in order to expedite housing development in the area.*

3           The DRE Subdivision Reports for Cambria state that as of the date of the  
4 report, Sunbelt Sanitation is the sewer provider for the development. At the hearing, Mr.  
5 Lee testified that the homeowners' association would be the provider. Clearly, one of  
6 these is wrong. However, there has been no effort by AUSS or the developer to amend or  
7 clarify the Subdivision Reports which clearly envisioned, from the applications the  
8 developers filed, that a public service corporation named Sunbelt Sanitation would provide  
9 sewer service. Sunbelt is not a public service corporation, but is owned in part by Maurice  
10 Lee and Steve Kohner.

- 11           3.     *AUSS began construction of a 400,000 gallon WWTP to serve a large scale*  
12                     *development prior to receiving any approval of its 208 or its CC&N.*

13           This violation is not merely a technicality. Without 208 or CC&N approval,  
14 there has been no government oversight of AUSS' development goals. These regulatory  
15 requirements were instituted to prevent such runaway development.

- 16           4.     *AUSS Has Contrived Deals with Developers so that it will Acquire Nine*  
17                     *Million Dollars Worth of Property for Virtually Nothing.*

18           AUSS has three different and troubling deals to acquire ownership rights to  
19 the various wastewater treatment plants built, in construction, or planned for the area.  
20 Although these agreements will forever impact the homeowners in these areas, they have  
21 not been subject to Commission scrutiny. The three deals are as follows.

- 22           •     *For a mere \$10, AUSS can acquire the ownership rights to the Links WWTP.*  
23           •     *AUSS has asserted that it will acquire ownership of the \$1.5 million*  
24                     *Cambria WWTP for free, without any written contract, if it is granted a*  
25                     *CC&N.*  
26

- *AUSS has provided contracts for the building of the Castlegate WWTP. These contracts required that AUSS "kick-back" money to the developer based on the proceeds received by AUSS.*

Johnson Utilities respectfully submits that the RO does not give sufficient weight to AUSS' behavior and errs in concluding that AUSS is a fit and proper entity to receive a CC&N. In addition, the RO appears to rely upon the location of AUSS' existing sewer facilities as a factor in favor of AUSS. The fact that AUSS has sewer facilities within one mile of the developments is the problem, not the solution, and the Commission should not reward AUSS for this behavior.

#### IV. CONCLUSION

Johnson Utilities respectfully requests that its Application for certificate expansion be approved and that AUSS' request for a certificate be denied. In the alternative, Johnson Utilities respectfully requests that this matter be remanded to the Administrative Law Judge for further investigation of the issues raised in these Exceptions and Johnson Utilities' Application for Order prohibiting AUSS from constructing a utility plant and offering public service.

Respectfully submitted this 13<sup>th</sup> day of December, 2001.

LEWIS AND ROCA LLP



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Michael T. Hallam  
40 N. Central Avenue  
Phoenix, Arizona 85004  
Attorneys for Johnson Utilities Company

1 Original and ten (10) copies of  
2 the foregoing hand-delivered  
3 this 13<sup>th</sup> day of December, 2001, to:

4 The Arizona Corporation Commission  
5 Docket Control  
6 1200 W. Washington Street  
7 Phoenix, Arizona 85007

8 Copy of the foregoing hand-delivered  
9 this 13<sup>th</sup> day of December, 2001, to:

10 Marc E. Stern  
11 Administrative Law Judge  
12 Arizona Corporation Commission  
13 1200 W. Washington Street  
14 Phoenix, Arizona 85007

15 William A. Mundell, Chairman  
16 Arizona Corporation Commission  
17 1200 W. Washington Street  
18 Phoenix, Arizona 85007

19 Jim Irvin, Commissioner  
20 Arizona Corporation Commission  
21 1200 W. Washington Street  
22 Phoenix, Arizona 85007

23 Marc Spitzer, Commissioner  
24 Arizona Corporation Commission  
25 1200 W. Washington Street  
26 Phoenix, Arizona 85007

Jim Fisher  
Utilities Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

LEWIS  
AND  
ROCA  
LLP

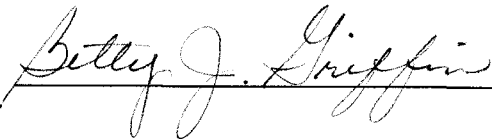
L A W Y E R S

1 Ernest Johnson, Director  
2 Utilities Division  
3 Arizona Corporation Commission  
4 1200 W. Washington Street  
Phoenix, Arizona 85007

5 Janice Alward  
6 Legal Division  
7 Arizona Corporation Commission  
8 1200 W. Washington Street  
Phoenix, Arizona 85007

9 Copy of the foregoing mailed  
10 this 13<sup>th</sup> day of December, 2001, to:

11 Jeffrey W. Crockett  
12 Snell & Wilmer  
13 One Arizona Center  
Phoenix, Arizona 85004-2202

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OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTLE

DATE: 12/05/01 TIME: 1552  
FEE : 0.00  
PAGES: 2  
FEE NO: 2001-055973

**RESOLUTION NO. 120501-CS**

**WHEREAS**, the Pinal County Board of Supervisors views quality controlled development as beneficial to the County; and

**WHEREAS**, the development of economically viable sewer systems is vital to well-planned quality controlled development; and

**WHEREAS**, the Pinal County Board of Supervisors is on record both desiring and requiring large multi-subdivision and physically interconnected sewer systems for all new development in the County; and

**WHEREAS**, the request for CC&N's to support development in the part of Pinal County east of Ironwood/Vineyard Road and south of Ocotillo Road is contested by both Arizona Utility and Supply Services and Johnson Utilities; and

**WHEREAS**, the future well being of home buyers, in the CC&N contested area, is important to the Board of Supervisors; and

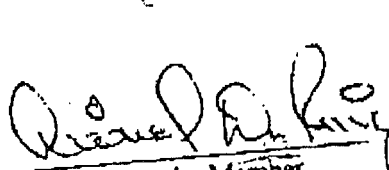
**WHEREAS**, AUSS has begun construction of a sewer treatment plant in the Cambria subdivision, without first obtaining the necessary documentation and ADEQ approvals, as required by law; and

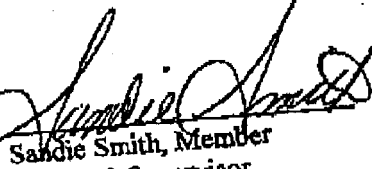
**WHEREAS**, formal charges against AUSS, for other alleged and probable violations of ① Arizona Revised Statutes, ② Arizona Department of Environmental Quality rules and regulations and ③ Arizona Corporation Commission rules and regulations, have been filed with the Arizona Corporation Commission and appear to be valid and substantial concerns; and

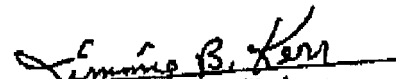
**WHEREAS**, the known infractions of the law, by AUSS and the allegations of further wrongdoing listed in documentation filed before the Arizona Corporation Commission have created concern and grave doubts about AUSS' intentions and abilities for the long term future of sewer service in the contested area;

**THEREFORE, LET IT BE RESOLVED** and let the record show, the Pinal County Board of Supervisors considers the approval of CC&N's, in the contest area, for AUSS to not be in the best interest of Pinal County and respectfully asks the Arizona Corporation Commission to not award the CC&N's to Arizona Utility and Supply Services.


**APPROVED AND ADOPTED** this 5<sup>th</sup> day of December, 2001.

  
Lionel D. Ruiz, Member  
District 1 Supervisor

  
Sandie Smith, Member  
District 2 Supervisor

  
Jimmie B. Kerr, Chairman  
District 3 Supervisor

ATTEST

  
Stanley D. Griffis, Ph.D.  
Clerk of the Board

**B**

# THE Tribune

Legal Advertising

120 W. First Avenue Mesa, Arizona 85210

## Affidavit of Publication

P.O. Number: None. NITRATE

Invoice Number: 151513

Price: \$82.28 Paid by CC

STATE OF ARIZONA  
County of Maricopa

I, Dianna Nedd, Legal Clerk, acknowledge  
that the attached ad was published  
in a newspaper of general circulation.  
The dates of the publication are as follows:  
April 5, 2000

The Tribune (East Valley Edition)

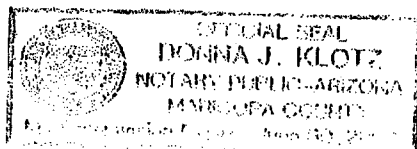
*Dianna Nedd*

Legal Clerk

Subscribed and sworn to me on this date:  
April 5, 2000

*Donna J. Klotz*

Notary Public



Ad # 151513

Date 04/04/2000

Time 9:14 AM

**PUBLIC NOTICE**

**NITRATE**

This notice is to inform customers of Johnson Utilities/Johnson Ranch Water System PWS #11-128, that the water system violated the maximum contaminant level for NITRATE from August 31, 1999 to March 8, 2000.

The water system has installed a Reverse Osmosis Water Treatment System to correct the Nitrate water quality problem. On March 13, 2000 the ADEQ issued a "Approval of Construction" related to the recent installation of a Reverse Osmosis Water Treatment System.

*Nitrate: The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nitrate poses an acute health concern at certain levels of exposure. Nitrate is used in fertilizer and is found in sewage and wastes from human and/or farm animals and generally gets into drinking water from those activities. Excessive levels of nitrate in drinking water have caused serious illness and sometimes death in infants under six months of age. The serious illness in infants is caused because nitrate is converted to nitrite in the body. Nitrite interferes with the oxygen carrying capacity of the child's blood. This is an acute disease in that symptoms can develop rapidly in infants. In most cases, health deteriorates over a period of days. Symptoms include shortness of breath and blueness of the skin. Clearly, expert medical advice should be sought immediately if these symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and State health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at 10 parts per million (ppm) for nitrate to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrate at 1 ppm. To allow for the fact that the toxicity of nitrate and nitrite are additive, EPA has also established a standard for the sum of nitrate and nitrite at 10 ppm. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrate.*

Analytical results of samples collected on August 31, 1999 by Johnson Utilities indicated Nitrate at 10.9mg/L. Samples collected by ADEQ on December 2, 1999 indicated Nitrate at 17.0mg/L. Samples collected on March 8, 2000 by Johnson Utilities after treatment and blending indicated Nitrate at 6.62mg/L.

Please contact Johnson Utilities Co., at (480) 998-3300 for more information.

Apr 5, 2000/151513

Ad shown is not actual print size

# THE Tribune

Legal Advertising

120 W. First Avenue Mesa, Arizona 85210

## Affidavit of Publication

P.O. Number: None. FAILURE TO MONITOR

Invoice Number: 151483

Price: \$27.03

STATE OF ARIZONA  
County of Maricopa

I, Dianna Nedd, Legal Clerk, acknowledge  
that the attached ad was published  
in a newspaper of general circulation.  
The dates of the publication are as follows:  
April 5, 2000

The Tribune (East Valley Edition)

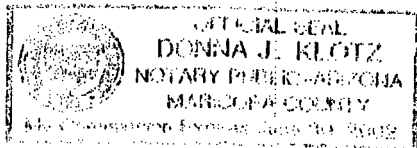
*Dianna Nedd*

Legal Clerk

Subscribed and sworn to me on this date:  
April 5, 2000

*Donna J. Klotz*

Notary Public



Ad # 151483

Date 04/04/2000

Time 9:14 AM

**PUBLIC NOTICE**

**FAILURE TO MONITOR**

This notice is to inform customers of Johnson Utilities/Janson Ranch Public Water System ID# 11-128 that the water supplier failed to comply with Total Coliform monitoring requirements during July 1997, August 1998, September 1999 and Nitrate monitoring requirements during Third Quarter 1999, 4th Quarter 1999. Public water systems are required by the U.S. Environmental Protection Agency and the Arizona Department of Environmental Quality to monitor the drinking water for Total Coliform and Nitrate. The water system will enter a consent order with ADEQ, and agree to comply with the applicable rules and regulations to assure these problems do not reoccur. Please contact Johnson Utilities Co. at (450) 998-3300 for more information.

Apr 5, 2000/151483

Ad shown is not actual print size



# THE Tribune

Legal Advertising

120 W. First Avenue Mesa, Arizona 85210

## Affidavit of Publication

P.O. Number: None. TOTAL COLIFORM BACTERIA

Invoice Number: 151499

Price: \$62.47

STATE OF ARIZONA  
County of Maricopa

I, Dianna Nedd, Legal Clerk, acknowledge  
that the attached ad was published  
in a newspaper of general circulation.  
The dates of the publication are as follows:  
April 5, 2000

The Tribune (East Valley Edition)

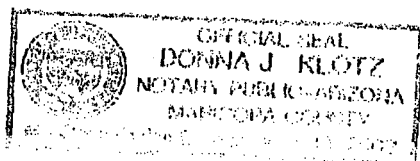
*Dianna Nedd*

Legal Clerk

Subscribed and sworn to me on this date:  
April 5, 2000

*Donna J. Klotz*

Notary Public



Ad # 151499

Date 04/04/2000

Time 9:15 AM

PUBLIC NOTICE

TOTAL COLIFORM  
BACTERIA

This notice is to inform customers of Johnson Utilities/Janson Ranch Water System PWS #11-128, that the water system violated the maximum contaminant level for TOTAL COLIFORM for 13 days during October, 1999, (10/1/99 thru 10/13/99).

The water system has disinfected the distribution system to correct the problem.

Total coliform: "The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliform is a possible health concern. Total coliform are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possible jaundice, and associated headache and fatigue. These symptoms, however, are not just associated with disease causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable standard for total coliform to reduce the risk of these adverse health effects. Under this standard no more than 5.0 percent of the samples collected during a month can contain these bacteria except that systems collecting fewer than 40 samples that have one total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe."

As a result of the disinfection of the distribution system, samples collected after 10/13/99 indicated that total coliform was no longer present in the distribution system.

Please contact Johnson Utilities at (480) 998-3300 for more information.

Apr 5, 2000/151499

Ad shown is not actual print size

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2001 NOV 14 P 4: 08

BEFORE THE ARIZONA CORPORATION COMMISSION  
AZ CORP COMMISSION  
DOCUMENT CONTROL

WILLIAM A. MUNDELL  
Chairman

JIM IRVIN  
Commissioner

MARC SPITZER  
Commissioner

APPLICATION OF ARIZONA UTILITY  
SUPPLY AND SERVICES, LLC FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE SEWER  
SERVICE TO PORTIONS OF PINAL  
COUNTY, ARIZONA

Docket No. SW-04002A-01-0228

IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES, L.L.C. DBA  
JOHNSON UTILITIES COMPANY FOR AN  
EXTENSION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO  
PROVIDE WASTEWATER SERVICE TO  
THE PUBLIC IN THE DESCRIBED AREA  
IN PINAL COUNTY, ARIZONA

Docket No. WS-02987A-01-0295

Application for Order Prohibiting  
AUSS from Constructing Utility Plant  
and Offering Public Utility Service  
Pending a Ruling on CC&N  
Applications and Request for Expedited  
Hearing

Application

Johnson Utilities L.L.C. dba Johnson Utilities Company ("Johnson Utilities") files this application in an effort to stop Arizona Utility Supply and Services, L.L.C. ("AUSS") from constructing wastewater treatment plants and related infrastructure, including distribution lines ("Facilities"), and offering public utility service without having obtained a Certificate of Convenience and Necessity ("CC&N") from the Arizona Corporation Commission ("Commission").

Johnson Utilities' application is made pursuant to A.R.S. § 40-202 (authorizing the Commission to supervise and regulate public service corporations and do all things necessary and convenient in the exercise of such power and jurisdiction), § 40-203 (authorizing the Commission to determine and prescribe contracts and practices of public service corporations if unjust, discriminatory, preferential, illegal or insufficient) and § 40-281(A) (requiring a public service corporation to first obtain a certificate of public convenience and necessity before beginning construction of plant or facilities).

This application is supported by the record in these proceedings and the following memorandum.

### Memorandum

#### **Introduction**

Under the clear statutory prohibition of A.R.S. § 40-281(A), AUSS should be prohibited from constructing Facilities and providing service prior to receiving a CC&N. AUSS implicitly acknowledges as much by its CC&N application in these proceedings, yet its conduct continues to flout the statutory prohibition and this Commission's jurisdiction even while its CC&N application is pending. To ensure the integrity of these proceedings, to preserve the status quo and to protect the interests of the ultimate customers, Johnson Utilities respectfully requests that the Commission issue an order prohibiting any further construction of Facilities, provision of service and related activities until the Commission has ruled on the pending CC&N applications of both AUSS and Johnson Utilities.

Failure to prohibit continuing illegal conduct will encourage other utility providers to offer services to developers and initiate construction of Facilities before obtaining approval from the Commission. If the statutory prohibition is not enforced, the result will be to subvert Commission authority and make a mockery of the CC&N process. The failure to exercise jurisdiction and enforce the statute will likewise contribute to investment of millions of dollars in plants and infrastructure – behind a thin veil of puppet nonprofit homeowners' associations – with

1 prearranged "deals" to transfer ownership of these Facilities to public service companies-in-  
2 waiting that have yet to obtain any CC&N.

### 3 **Procedural History**

4 Both Johnson Utilities and AUSS have pending before the Commission applications for  
5 CC&Ns for wastewater services pertaining to portions of northern Pinal County. Johnson seeks  
6 an extension of its certification to provide wastewater service in northern Pinal County and the  
7 Queen Creek area (Docket No. WS-02987A-01-0295). AUSS seeks certification to provide  
8 service to portions of Pinal County (Docket No. SW-04002-A-01-0228). The parties' respective  
9 applications are, in part, competing. Specifically, with respect to Pinal County Sections 19, 20,  
10 21, 22, 29 and 30 of Township 2 South, Range 8 East, the applications overlap (the "overlap  
11 area"). The applications have been consolidated, were the subject of hearings on August 15 and  
12 16, 2001, and are currently under advisement by the Administrative Law Judge, Marc E. Stern.

### 13 **AUSS' Conduct<sup>1</sup>**

14 Despite the pendency of the parties' competing applications to serve the overlap area,  
15 AUSS has taken and continues to take actions that are prohibited by statute, threaten to undermine  
16 the Commission's authority and injure Johnson Utilities' rights to a fair hearing and to protection  
17 of its prospective economic advantage. While its own CC&N application – which acknowledges  
18 the Commission's authority to regulate providers of wastewater service – is pending, AUSS  
19 simultaneously seeks to bypass the Commission's authority by "handshake deals" and other  
20 arrangements with developers to construct multiple, fragmented wastewater systems through a  
21 puppet nonprofit homeowners' association. If AUSS' CC&N application is approved, the  
22 handshake deals will be consummated – the homeowners' association's veneer of "ownership"  
23 will immediately be replaced by a prearranged transfer of ownership to AUSS. AUSS will have  
24 succeeded, through a grand shell game, in building a utility system without first having obtained  
25 from the Commission a certificate of public convenience and necessity.

26  

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<sup>1</sup> A more detailed chronology of events is attached as Exhibit A.

1        There are at least five specific actions that AUSS continues to take that this Commission  
2 must stop. First, Johnson Utilities has been informed by a developer in the area that AUSS has  
3 represented to interested parties that AUSS *already has obtained* a CC&N for the overlap area.  
4 AUSS is evidently claiming that the Commission somehow failed to act within applicable  
5 licensing time-frames and, consequently, the Commission no longer has jurisdiction to award to  
6 the most qualified candidate the right to serve the overlap area and – by default or self-proclaimed  
7 fiat – AUSS has secured a “right” to serve.

8        Second, AUSS continues to operate as a wastewater service provider in northern Pinal  
9 County in contravention of Commission statutes. The shell game AUSS has played to hide its  
10 true ownership interests in Facilities was revealed at the August 2001 hearings. Since that time  
11 AUSS has done nothing to clarify, correct or distance itself from the presumption that it is a  
12 regulated utility operating without the approval of the Commission. Rather, AUSS continues to  
13 work behind the scenes to assist its partner-developers to build and sell homes without a proper  
14 and professionally planned solution to their wastewater needs that has been reviewed and  
15 approved by the Commission. In fact, as explained below, AUSS is currently serving the Cambria  
16 development using the Links plant.

17        Third, AUSS has apparently duped both the Commission and the Arizona Department of  
18 Environmental Quality (“ADEQ”) regarding AUSS’ true interest in various sewer assets in the  
19 overlap area. AUSS effectively owns two wastewater Facilities in the area in which it seeks, but  
20 has not been granted, a CC&N. AUSS sent an April 16, 2001 letter to ADEQ acknowledging  
21 ownership of the Links plant. *See Exhibit B.* That ownership was confirmed in an earlier letter  
22 from an AUSS consultant. *See Exhibit C.* Similarly, AUSS has an apparent “handshake” deal  
23 with Woodside Homes wherein AUSS will obtain ownership of the \$1.5 million Cambria  
24 wastewater treatment plant from Woodside Homes *for free* – if its CC&N application is approved.  
25 In effect, AUSS is charging developers hook-up fees and other charges to build Facilities without  
26 a Commission approved tariff authorizing those fees and charges.

Fourth, on August 10, 2001, ADEQ issued a Cease and Desist letter to AUSS stating that construction of the Cambria plant was in violation of ADEQ rules. AUSS has sought to subvert ADEQ's order by attempting to install smaller unregulated systems on an "interim" basis until it is granted approval to continue construction of the Cambria plant. AUSS' continued tinkering with wastewater systems in the overlap area adversely affects Johnson Utilities' prospective interests as well as jeopardizes the integrity of these proceedings and the Commission's authority generally.

Finally, AUSS made misrepresentations that homebuilders then relied on in obtaining a subdivision approval for Cambria parcels 4 & 6 that are connected to the Links wastewater treatment plant. These subdivision approvals are based on the assumption that wastewater from the Cambria subdivision[s] can be treated at the Links wastewater treatment plant. But the Links plant is only permitted to receive flows from the Links subdivision – not from Cambria. AUSS must seek the proper modification to the existing 208 application before the Links plant can accept sewage from an off-site source. More importantly, the Links facility is purportedly owned by a homeowners' association, but the Cambria development is not within the homeowners' association; therefore, the Links facility is providing public utility service outside the homeowners' association area without a CC&N in violation of Commission authority.

While the 208, CC&N and wastewater approval processes can be protracted and, therefore, troubling to home developers, these processes are statutorily-mandated and vitally important to maintaining control over development. For that reason, parties like AUSS should be prohibited from "gaming" these processes through "deals" and other arrangements with anxious home developers.

## **The Stakes**

The stakes here are high. The ongoing gamesmanship of AUSS circumvents the authority of the Commission. Indeed, AUSS undercuts the Commission's authority even while it seeks the Commission's approval of its own pending CC&N application.

AUSS' conduct also jeopardizes the prospective economic interests of Johnson Utilities. For example, Johnson Utilities will be prejudiced in these proceedings if AUSS is allowed to



1 continue to construct Facilities in violation of A.R.S. § 40-281(A) and then parlay its continuing  
2 statutory violations into an argument that it is better able to meet utility service needs in the  
3 overlap area because of its already-existing Facilities (albeit illegally constructed). In fact, at the  
4 CC&N hearing, two developers supported AUSS' application because AUSS already had  
5 Facilities in this area. Further, if Johnson Utilities is certificated to provide utility service in the  
6 overlap area, Johnson Utilities will have had no ability to inspect the design, materials or  
7 installation of the AUSS-orchestrated and prematurely constructed Facilities. Nor will Johnson  
8 Utilities have had an opportunity to address warranty, title, easement and an array of other issues  
9 critical to Johnson Utilities' operation and maintenance requirements and integral to applicable  
10 rate making criteria. Also, the AUSS Facilities in the overlap area may not be consistent with  
11 Johnson Utilities' master plan to serve the larger area for which it seeks certification – resulting in  
12 expensive and disruptive redesign, removal and replacement of Facilities.

13 The mandate of A.R.S. § 40-281(A) is clear:

14 A public service corporation ... shall not begin construction of a  
15 ... line, plant, service or system, or any extension thereof, without  
16 first having obtained from the commission a certificate of public  
convenience and necessity.

17 AUSS' conduct repudiates the statute, infringes on this Commission's authority, threatens the  
18 integrity of these proceedings and interferes with Johnson Utilities' prospective economic  
19 advantage.

20 The failure of the Commission to act immediately to halt AUSS' conduct will reward  
21 corporate gamesmanship and encourage companies, like AUSS, to hide behind puppet nonprofits  
22 to achieve their own economic ends. Future development will rest not on compliance with  
23 Arizona statutes, but instead on the success of the shell-games among aspiring utilities,  
24 homebuilders and their puppet nonprofits.  
25  
26

1 **Relief Requested**

2 AUSS will not be damaged if the Commission enters the relief requested by Johnson  
3 Utilities. The requested relief merely ensures that A.R.S. § 40-281(A) will be observed and that  
4 the status quo will be maintained pending final determination of the parties' competing CC&N  
5 applications to serve the overlap area. The issuance of the relief sought by Johnson Utilities will  
6 help to reestablish the proper, fair and lawful competitive positions of the parties, as well as  
7 protecting the integrity of this Commission's proceedings and regulatory authority.

8 Johnson Utilities requests, pending final determination of the parties' respective CC&N  
9 applications, that this Commission immediately enter an order prohibiting AUSS, either directly  
10 or indirectly, whether alone or in concert with others, from doing any of the following:

11 A. Constructing any line, plant, sewer or system, or any extension thereof, within the  
12 overlap area of the parties' pending CC&N applications;

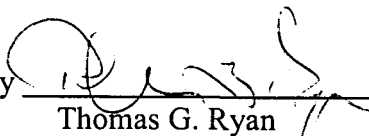
13 B. Providing utility service, directly or indirectly, within the overlap area of the  
14 parties' pending CC&N applications; and

15 C. Representing that it already has obtained the right to serve the overlap area.

16 Alternatively, Johnson Utilities requests that an expedited hearing before this Commission  
17 be conducted to address the matters herein and the relief sought by Johnson Utilities.

18 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of November, 2001.

19  
20 LEWIS AND ROCA LLP

21 By   
22 Thomas G. Ryan

23 Thomas H. Campbell

24 Michael L. Denby

25 Attorneys for Johnson Utilities L.L.C.  
26 dba Johnson Utilities Company

LEWIS  
AND  
ROCA  
LLP  
LAWYERS

1 ORIGINAL and 10 copies of  
2 the foregoing filed this 14th  
day of November, 2001, with:

3 The Arizona Corporation Commission  
4 Docket Control – Utilities Division  
1200 West Washington Street  
Phoenix, Arizona 85007

6 COPY of the foregoing  
7 hand delivered this 14th  
day of November, 2001, to:

8 Marc E. Stern  
9 Administrative Law Judge  
Arizona Corporation Commission  
10 1200 W. Washington Street  
Phoenix, Arizona 85007

11 Janice Alward  
12 Legal Department  
Arizona Corporation Commission  
13 1200 W. Washington Street  
Phoenix, Arizona 85007

14 Jim Fisher  
15 Utilities Division  
Arizona Corporation Commission  
16 1200 W. Washington Street  
Phoenix, Arizona 85007

17 William A. Mundell, Chairman  
18 Arizona Corporation Commission  
1200 W. Washington Street  
19 Phoenix, Arizona 85007

20 Jim Irvin, Commissioner  
Arizona Corporation Commission  
21 1200 W. Washington Street  
Phoenix, Arizona 85007

22 Marc Spitzer, Commissioner  
23 Arizona Corporation Commission  
1200 W. Washington Street  
24 Phoenix, Arizona 85007

COPY of the foregoing  
mailed this 14th  
day of November, 2001, to:

Jeffrey C. Zimmerman  
Brad K. Keogh  
Moyes Storey Ltd.  
3003 N. Central Avenue  
Suite 1250  
Phoenix, Arizona 85012

Betty J. Griffin

A

## CHRONOLOGY OF EVENTS

### **BUILDING AND OWNING UTILITY FACILITIES WITHOUT A CC&N: Ownership of the Links and Cambria**

AUSS does not have a CC&N, yet it owns both the Links at Ocotillo Wastewater Treatment Plant ("Links") and the Cambria Wastewater Treatment Plant ("Cambria").

#### **The Links:**

- 1) On March 14, 2001, Terry L Moore, AUSS's consultant sent a letter to ADEQ stating that AUSS "owns the Links at Ocotillo wastewater treatment plant." *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab B.*
- 2) On April 16, 2001, Maurice Lee followed up with his own letter to ADEQ wherein he asserted that AUSS is the owner of the Links wastewater treatment plant. That letter stated: "Please be advised that Arizona Utility Supply and Services, L.L.C., has taken over and has been assigned the ownership of the Links at Ocotillo wastewater treatment plant as well as the lift station under the above captioned file number." *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab B.*
- 3) At the hearing, Jim Fisher, executive consultant for the Utilities Division of the Corporation Commission, was asked whether in drafting the Staff Report it was the Commission's understanding that AUSS owned the Links wastewater treatment plant. Mr. Fisher stated that it was his understanding that AUSS owns the Links wastewater treatment plant. *Transcript at 350.*

#### **Cambria:**

- 1) In March, 2001, AUSS filed a 208 Water Quality Plan Amendment entitled "Arizona Utility Supply and Services LLL Wastewater Treatment Facilities." In its request for a 208 amendment, AUSS stated that "AUSS owns the Cambria WWTF site." *CAAG 208 Water Quality Plan Amendment for Arizona Utility Supply and Services, LLC Wastewater Treatment Facilities, March 2001 at 4.*
- 2) In a March 1, 2001 letter from Maurice Lee to Jim Lee and Harry Redman at Madison Diversified, AUSS states that it "is building the treatment plant (Cambria) and will also own the entire treatment and collection system." *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab D.*

- 3) At the hearing, Jim Fisher was asked whether in drafting the Staff Report it was the Commission's understanding that AUSS owned the Cambria wastewater treatment plant. Mr. Fisher stated that it was his understanding that AUSS owns the Cambria plant. *Transcript at 348.* At no time before, during or after the hearing did AUSS take any steps to disabuse or correct this understanding by the Commission. In fact, AUSS embraced and supported this incorrect position in its exceptions to Staff Report by not correcting Staff's misunderstanding, instead focusing on concerns about Johnson Utilities' "construction costs." *Arizona Utility Supply Services LLC Exceptions to Staff Report.*
- 4) Although Maurice Lee has asserted throughout the hearing process that AUSS does not presently own the Cambria WWTP, he did concede that he was building the Cambria WWTP for AUSS if AUSS receives a CC&N. *Transcript at 94.*

Although AUSS denies that it owns the Links and Cambria wastewater treatment plants and claims that it is not subject to Commission regulation, its own statements contradict those assertions. AUSS acknowledges that it is Public Service Corporation subject to Commission jurisdiction, yet it operates without a CC&N.

- 1) In its 208 Water Quality Plan Amendment, AUSS states that "The Company (AUSS), as the facility owner, has requested that the Arizona Corporation Commission (Commission) issue a Certificate of Convenience and Necessity for wastewater service for the entire development. As a **public service corporation**, the Company is required to obtain prior approval of all long-term financing pursuant to A.R.S. 40-301 et. seq." *CAAG 208 Water Quality Plan Amendment for Arizona Utility Supply and Services, LLC Wastewater Treatment Facilities, March 2001 at 10, 18 and 26* (emphasis added).
- 2) The 208 also states: "The processing of the financing application will be contemporaneous with the processing of the Certificate of Convenience and Necessity application." *Id. at 10.* In his testimony, Maurice Lee acknowledged that the Cambria plant is 60% complete (*Transcript at 87*) and that the facility will cost approximately \$1.5 million. *Transcript at 91.* He stated that the monies have come from Woodside Homes and Madison Diversified and that there is no repayment agreement. *Transcript at 89.*

Although AUSS asserted at the hearing that the facilities are owned by homeowners' associations, the documents filed in support of the Cambria subdivision contradict that claim and establish that a private wastewater company will serve this development. Nowhere in the public files do the Cambria developers seek to have a homeowners' association provide their wastewater service. Under Commission statutes, private wastewater companies must obtain a CC&N before they can serve developments like Cambria.

- 1) Sewer service for Cambria is being provided not by a homeowners' association, but by Sunbelt Sanitation Group (which transferred all its ownership interests to AUSS). *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab B.*
- 2) Pursuant to ADEQ forms for the Cambria development, when asked to provide the "name of sewer system or municipality," Maurice Lee inserted "Sunbelt Sanitation Group," and signed on its behalf. Maurice Lee did not list or even reference the potential for a homeowners' association to provide wastewater service. *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab B.*
- 3) The Public Report issued by the Department of Real Estate ("DRE") states on page 5 that Sewage Disposal will be provided by Sunbelt Sanitation Group and does not reference any homeowners' association as wastewater provider. *Arizona Department of Real Estate, Public Report, Registration No. DM01-027112, Cambria Parcel 4.*
- 4) In the Cambria Parcel 4 application to DRE, the applicant clearly anticipates that Sunbelt Sanitation Group will provide wastewater service to the development and never even intimates that ownership will be by homeowners' association. *Application for Public Report, Section III, Questionnaire, Subdivided Lands, Dated February 21, 2001 pages 19-21.*
- 5) If AUSS, which now holds all interests of Sunbelt Sanitation, is not the correct wastewater provider as AUSS has tried to assert during the hearing, then DRE should suspend home sales and issue a new Public Report identifying the true wastewater provider for the Cambria development. *Arizona Administrative Code Title 4, Chapter 28.*

At the same time that AUSS has been telling ADEQ, the County and others that it owns the Links and Cambria wastewater treatment plants, it has been crafting documents and entering into "handshake" agreements that appear to provide for ownership of the wastewater treatment plants.

- 1) Pursuant to discovery requests, AUSS produced a written contract which appears to be dated February 1, 2001 among DJSP, LLC, "the current owner of the equipment used and located" at the Links, the Links at Ocotillo Homeowners' Association, and AUSS, that appears to try to allocate the ownership of the Links wastewater treatment plant. *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab A.*
- 2) Under this agreement, AUSS has the option to purchase for \$10, "all right, title, claim, and interest of the Association in the (Links) Plant." *Id.*



- 3) Although the agreement appears to be among three parties, there are only two signatories – Maurice Lee for AUSS and Stephen Kohner for DJSP, LLC and The Links at Ocotillo Homeowners' Association. *Id.* A closer examination of corporate records shows that Mr. Lee and Mr. Kohner together also make up 100% of the interest in AUSS, the party acquiring the Links wastewater plant for \$10. *Testimony at 113-114.* This is the equivalent of a "contribution." Therefore, AUSS will have no rate base so it cannot earn anything other than its documented expenses. Mr. Lee's and Mr. Kohner's "salary" must be for work performed. They have no incentive to be in the wastewater business unless it is for management fees or for selling houses.
- 4) According to Mr. Lee's testimony, "The building of the Cambria plant was very loosely, almost on a handshake." *Id.* Pursuant to this loose, handshake agreement, if AUSS receives the CC&N for the contested area, AUSS will get the Cambria plant for free. If AUSS does not receive the CC&N, AUSS will not receive the plant. *Id. at 92.* Although Mr. Lee has asserted throughout this hearing process that AUSS does not presently own the Cambria WWTP, he did concede that he was really building the Cambria WWTP for AUSS if AUSS receives its CC&N. *Id. at 94.*
- 5) AUSS also produced an amendment to the February 1, 2001 contract that provided Woodside Homes developers with an ownership right in the Links wastewater treatment plant as well. Therefore, what was purportedly owned by a homeowners' association is now owned by the association and a developer, with AUSS having an option to purchase the facility for \$10. *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab A.*

The Commission Staff acknowledges that AUSS owns the Links and Cambria wastewater treatment plants.

- 1) On July 10, 2001, Staff issued its Staff Report for the applications in this matter. *Staff Report, Utilities Division, Arizona Corporation Commission, Docket No. SW-04002A-01-0228 and Docket No. WS-02987A-01-0295.*
- 2) The Staff Report states that "AUSS is a sewer utility based in Phoenix, Arizona, seeking authority to provide services to 5 Sections Southeast of Phoenix, in Queen Creek, Arizona." *Id. at 1* (emphasis added). It is clear from the Staff Report that the Commission Staff considers AUSS a "sewer utility" even though AUSS claims that it is not a utility, but only an operator of the Links wastewater treatment plant.

- 3) The Staff Report also states: "The developers have installed the physical treatment plant and transferred it to AUSS." *Id. at 1.*
- 4) Additionally, the Staff Report refers to the Links wastewater treatment plant as "the AUSS Links Wastewater Treatment System." *Id.*
- 5) The Staff Report also clearly acknowledges that AUSS was building the Cambria plant without the appropriate permits, yet seemed to overlook this violation: "Although ADEQ has not issued either a Certificate of Approval to Construct or an APP for the Cambria Plant, AUSS has started construction of the plant. Staff observed the construction activity on June 13, 2001 during a site inspection. Staff also observed housing construction activity in the Cambria Subdivision during its site inspection." *Id.*

AUSS has made it clear to the Commission and others involved in this process that it does not intend to allow the Commission to control which entity will provide wastewater service to the area and that it will forestall any competition for service in the area.

- 1) The agreement among Woodside Homes, The Links and AUSS states: "Should AUSS not be able to obtain the CC&N for sewer service to Association or Woodside, the parties shall promptly and in good faith negotiate further amendments . . . to provide for ownership of the Plant and other wastewater treatment facilities by the Association and the Cambria property owners association, and operation of the Plant and other facilities by AUSS." *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab A.*
- 2) Furthermore, in its response to discovery requests, AUSS asserts that "With respect to the Cambria plant, it will be owned by a nonprofit homeowners association(s) unless AUSS is granted the CC&N for the appropriate area." Moreover, "[A]ny plants that are constructed in the future will be owned by nonprofit homeowners associations unless AUSS is granted the CC&N for the appropriate area." *Arizona Utility Supply & Service LLC's First Revised and Supplemented Response to First Set of Data Requests from Johnson Utilities Company, at paragraph 4.*
- 3) During cross-examination, Maurice Lee acknowledged to the Administrative Law Judge that, if the CC&N is awarded to AUSS, AUSS would obtain ownership interest in the Links. However, if AUSS is not awarded the CC&N, it will remain a homeowners' association. *Transcript at 115.*

- 4) In the past homeowners' associations have been used to assist small single developer developments meet the needs of a small group of homeowners. The four sections of land AUSS seeks to serve will comprise four wastewater treatment plants, four planned developments, over a section of land that presently has no planned developments, a multitude of developers and dozens of homebuilders. In fact, Mr. Lee testified that there would be approximately 25,000 houses in this area. *Testimony at 121*. Clearly, AUSS' actions in this area are anything but a homeowners' association banding together to provide itself wastewater service. This is exactly the type of large development that is in need of Commission oversight.

#### **ACTING AS A PUBLIC SERVICE CORPORATION: Arrangements with Developers**

Regardless of the statements AUSS made at the hearing relating to its lack of ownership interest in Cambria and The Links, its actions speak volumes. AUSS has acted and continues to act as a Public Service Corporation.

#### **Imposing Rates and Charges and Agreeing to Serve**

- 1) AUSS has collected hook-up fees from developers and set rates for sewage service, all without having a Commission approved tariff on file. In response to discovery, AUSS provided the Commission with a series of letters wherein AUSS requests assessments of \$677 per lot with a monthly rate of \$30 per lot. *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab D, March 1, 2001 letter from Maurice Lee to Mr. Jim Lee and Harry Redman at Madison Diversified.*
- 2) When questioned about these charges, Maurice Lee acknowledged that Madison Diversified has paid AUSS even though AUSS had not filed a tariff with the Commission. *Transcript at 108.*
- 3) In response to discovery, AUSS also produced a two-part agreement between AUSS and Summer Ridge LLC. Summer Ridge appears to be the location of the proposed Castlegate wastewater treatment plant. *Arizona Utility Supply and Service LLC's First Revised and Supplemented Response to First Set of Data Requests from Johnson Utilities Company.*
- 4) The first part of the agreement between AUSS and Summer Ridge is a 21 page document entitled Lease Agreement. Pursuant to this agreement, for the first four years, AUSS will pay \$12,000 per year for use of the land. After the fourth year, this rent is increased to \$36,000 per year and incrementally increased after that. Additionally, AUSS

agrees to pay "percentage rent" which appears to be a payment to Summer Ridge based upon the gross proceeds of AUSS. *Id.*

- 5) The Lease Agreement also states: "Tenant (AUSS) acknowledges that the Premises currently consist of vacant land. Tenant, at **its sole expense**, shall construct, furnish and make such improvement to the Premises as are necessary for Tenant's use of the Premises, including, without limitation, a wastewater treatment facility." *Id.* (emphasis added).
- 6) The second part of the agreement between AUSS and Summer Ridge is entitled Agreement Regarding Wastewater Services. *Arizona Utility Supply and Service LLC's First Revised and Supplemented Response to First Set of Data Requests from Johnson Utilities Company.*
- 7) The Agreement Regarding Wastewater Services again sets forth numerous fees and charges associated with the building, ownership and operation of the Castlegate wastewater treatment plant or, in lieu thereof, fees to be paid should AUSS decide not to build the facility on Summer Ridge's property, additional fees related to gross proceeds of AUSS, assignment of all effluent to Summer Ridge, and the purchase by AUSS of "existing plans" for \$87,204. *Id.*

#### **Filing a 208 Amendment**

- 8) In March 2001, AUSS filed a 208 Water Quality Plan Amendment for Arizona Utility Supply and Services LLC Wastewater Treatment Facilities. *CAAG 208 Water Quality Plan Amendment for Arizona Utility Supply and Services LLC Wastewater Treatment Facilities.*
- 9) In this 208 Amendment, AUSS clearly states its intent to construct three wastewater treatment plants and its intent to serve the developments planned in the four sections of land proposed in its 208. *Id. at 2.*

#### **Building Wastewater Treatment Plants**

- 10) AUSS is building the Cambria wastewater treatment plant and has contracts to build the Castlegate wastewater treatment plant. *Arizona Utility Supply and Service LLC's First Revised and Supplemented Response to First Set of Data Requests from Johnson Utilities Company.*

#### **Negotiating with ADEQ for Approvals**

- 11) AUSS has negotiated and continues to negotiate with ADEQ regarding the permitting and approval of various aspects of the Cambria and The Links operations. *Arizona Utility Supply and Service LLC's Response*

to First Set of Data Requests from Johnson Utilities Company, at Tab D.

### **AUSS CORPORATE SHELL GAME: Avoiding Commission Jurisdiction**

A brief review of the history of AUSS and its acquisition of rights from Sunbelt Sanitation Group reveals a chain of ownership interests with common characters and characteristics. The two members of AUSS, Mr. Lee and Mr. Kohner, have used these corporate shells in various deals with developers to position AUSS as the owner of four wastewater treatment plants in the contested area while hiding behind a veil of nonprofit homeowners' associations.

- 1) To date, providing wastewater service by AUSS to the four sections of land at issue has involved the following people and corporate forms: Maurice Lee, Stephen Kohner, Ron Kohner, Judith Lee, Robert Turpin, Ken Bennett, John Bruner, Richard Weiss, K.T. Management Group LLC, K and T Management LLC, K&L Sanitation Services, LLC, Sunbelt Sanitation Group, LLC, Links Sunbelt Partners, LLC, DJSP LLC, Sunbelt Utility Services, LLC, Links at Queen Creek/DJSP, The Links at Ocotillo, LLC, The Links at Ocotillo Homeowners' Association and AUSS.
- 2) AUSS is owned 50% by Maurice Lee and 50% by Mr. Stephen Kohner.
- 3) Sunbelt Sanitation Group consists of Stephen A. Kohner, Maurice Lee, K and T Management, LLC, K & L Sanitation Services LLC, and Links Sunbelt Partners, LLC. *Arizona Corporation Commission State of Arizona Public Access System, 8/13/2001.*
- 4) Mr. Lee stated in his testimony that "Sunbelt Sanitation Group was a corporation that was originally formed to act as a utility company to Cambria subdivision." *Testimony at 72-73.*
- 5) In response to why Sunbelt Sanitation Group had assigned its interests to AUSS, Mr. Lee stated: "The original intent was to build the Cambria plant. When I was involved in it, there was (sic) other parties, and they wanted out of it, and I said I had an existing corporation called Arizona Utility Supply and Services, L.L.C. And I required that everything be transferred to that corporation as an existing corporation so that we could do business that way." *Id. at 73.*
- 6) During cross-examination Mr. Lee admitted that, even though Sunbelt Sanitation Group had assigned all its rights in the contested area to

AUSS, he continues to use Sunbelt Sanitation Group to obtain various permits and approvals for this contested area. *Id. at 81.*

- 7) Curiously absent from the hearings, but clearly represented in the issues associated with ownership of The Links and Cambria wastewater treatment plants is Stephen Kohner. Mr. Kohner is not only a 50% owner of AUSS, he is part owner of Sunbelt Sanitation Group LLC, K.T. Management Group LLC, K&L Sanitation Services, LLC, The Links at Ocotillo Homeowners' Association, The Links at Ocotillo, LLC, Links at Queen Creek/DJSP, LLC, and DJSP LLC. *Arizona Corporation Commission State of Arizona Public Access System, August, 2001.*
- 8) All of the entities mentioned above (with respect to which Mr. Kohner is a member) have played or continue to play a roll in the corporate shell game played by AUSS. It is clear that Mr. Kohner is manipulating the shells in an attempt to self-deal and that Mr. Lee is somehow getting ownership interests in assets while contributing no capital. For example, when AUSS entered into its agreement with The Links regarding the right of AUSS to acquire the Links wastewater treatment plant for \$10, Mr. Kohner signed on behalf of not only DJSP, which claimed to own the Links wastewater treatment plant, but he also signed on behalf of the Links at Ocotillo Homeowners' Association, the location of the plant. Mr. Lee signed on behalf of AUSS. *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab A.* When the Links agreed to give up the additional capacity at its wastewater treatment plant so that Cambria could use the capacity, again Mr. Kohner signed not only for DJSP, which claimed to own the Links wastewater treatment plant, but also for the Links at Ocotillo Homeowners' Association, the location of the plant. Mr. Lee signed on behalf of AUSS. *Id.* Finally, when Sunbelt Sanitation Group (to which both Mr. Lee and Mr. Kohner are members) agreed to sign its interests over to AUSS, Mr. Kohner and Mr. Lee signed on behalf of Sunbelt Sanitation Group and Mr. Lee alone signed on behalf of AUSS. *Id.*
- 9) Mr. Kohner's direct relationship to Mr. Lee, The Links at Ocotillo, the Links at Ocotillo Homeowners' Association, Sunbelt Sanitation Group, DJSP and AUSS evidences a clear intent to manipulate the regulatory system designed to control and regulate the installation and operation of wastewater service providers. Rather than waiting until the Commission has rendered a decision on whether to issue a CC&N for this area, Mr. Kohner, Mr. Lee and the developers have engaged in a shell game, trying to hide the true intent of their dealings behind the shield of nonprofit homeowners associations.

The corporate shell game undertaken by AUSS, its members and local developers has confused even those involved in the shell game.

- 1) On April 16, 2001, Maurice Lee sent a letter to ADEQ that claimed AUSS was the owner of the Links wastewater treatment plant: "Please be advised that Arizona Utility Supply and Services, L.L.C., has taken over and has been assigned the ownership of the Links at Ocotillo wastewater treatment plant as well as the lift station under the above captioned file number." *Transcript at 85-86.*
- 2) When questioned why he told ADEQ that AUSS was the owner of the Links wastewater treatment plant, Mr. Lee's only comment was that the statement signed by him must have been in error. *Id.*
- 3) On March 14, 2001, Terry L Moore, AUSS' consultant at the time, sent a letter to ADEQ stating that AUSS "owns the Links at Ocotillo wastewater treatment plant." *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab B.*
- 4) In its request for a 208 amendment, AUSS stated that "AUSS owns the Cambria WWTF site." *CAAG 208 Water Quality Plan Amendment for Arizona Utility Supply and Services, LLC Wastewater Treatment Facilities, March 2001 at 4.*
- 5) However, in response to written discovery, Mr. Zimmerman, counsel for AUSS states: "The current owner (of the Cambria plant) is Woodside." *August 9, 2001 letter from Mr. Jeffrey C. Zimmerman to Mr. Michael T. Hallam, Re: Arizona Utility Supply & Service LLC ("AUSS")/ Supplement to Response to First Set of Data Requests from Johnson Utilities.*
- 6) In public comment at the August 15, 2001 hearing, Kip Gilleland commented that "it was apparent to us that AUSS had a facility located near the property and that the sewer provider would more than likely be AUSS due to the location of their current plans (sic) and ability to construct a new plant." *Transcript at 7.*
- 7) Steve Flaggman also spoke at the hearing and stated that "because of the location of AUSS, they are best able to serve that area." *Transcript at 10.*
- 8) John Poulsen testified at the hearing that at the time he met with AUSS he considered "AUSS to be a provider of sewer to the area." *Transcript at 31.*

- 9) However, under cross-examination, Mr. Lee stated that "AUSS has no ownership interest in it (the Links wastewater treatment plant) at this time" or the Cambria plant. *Transcript at 111, 116.* Mr. Lee also stated that he did not hold himself out as a public service provider for the area. *Transcript at 118.*
- 10) In fact, AUSS is incorporated for the very purpose of being a public service provider. *Transcript at 73.*
- 11) In his cross-examination, Mr. Lee was unsure if DJSP, LLC, the Links at Ocotillo Homeowners' Association or Woodside Homes was the owner of the Links wastewater treatment plant, or if there was some combination of ownership between or among them. *Transcript at 84.* This is the very plant that Mr. Lee asserts AUSS does not own today, but pursuant to contract Mr. Lee and AUSS will acquire in the future for \$10, yet he professes not to know who actually owns the plant.

#### **INTENT OF AUSS: Speculating in the wastewater business.**

Without developers' money, it would appear that AUSS has neither the money nor financing available to operate one or more of these plants without putting the homeowners at great risk of being unable to respond to financial obligations.

- 1) Amid the corporate shell game, AUSS' intentions were made very clear at the hearing. Mr. Lee and Mr. Kohner are attempting to speculate in the wastewater business. According to the testimony of Mr. Johnson, Mr. Lee has been "trying to sell his interest to me four different times in the last two months." *Transcript at 238.*
- 2) Additionally, Mr. Lee acknowledged that this contested area is the only business operation that AUSS has at this time: "This is the only thing we're doing right now other than small other operations that Sunbelt is doing, but AUSS is not." *Transcript at 95.*
- 3) AUSS has not provided any evidence in this hearing to establish that it has the financial ability to operate as a public service corporation. It would appear that on the mere basis of a "handshake," AUSS will obtain 100% ownership of the Cambria plant. *Transcript at 91.* Should this "deal" fall through, AUSS has not evidenced any means of raising the \$1.5 million required to purchase it.
- 4) AUSS has also produced documents that indicate that for \$10 it can acquire the Links plant. *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab A.* However, Mr. Lee acknowledged at the hearing



that he is not certain who owns the Links at this time. Again, should this deal fail, AUSS has not evidenced any means of raising the capital required to purchase it.

B

**AZUSS**  
**Arizona Utility Supply & Services, LLC**  
4545 E. Shea Blvd. #164 Phoenix, AZ 85028  
(602) 923-9134 FAX (602) 923-9142

April 16, 2001

Mr. Mohamed A. Hegazy, Ph.D.  
Wastewater Design Review Unit, WPS, WQD  
Arizona Dept. of Environmental Quality  
3033 N. Central Ave.  
Phoenix, AZ 85012

RE: Engineering Review file No. 20000370  
Cambria Homes Lift Station  
Pinal County, Arizona

Dear Mr. Hegazy:

Please be advise that Arizona Utility Supply & Services, LLC has taken over and has been assigned the ownership of The Links at Ocotillo Wastewater Treatment Plant as well as the lift station under the above captioned file number.

Please find herewith enclosed the revised plans for the lift station showing the 100 year flood plain elevation as well as a copy of the signed conceptual County Approval Form from Pinal County.

Please advise as to when the plans can be issued the "Approval to Construct.

Very truly yours,  
ARIZONA UTILITY SUPPLY & SERVICES, LLC

  
Maurice Lee  
Member/Manager

cc: Terry Moore, P.E.  
Anita Pritchard, E.I.T. ADEQ Engineering Design Unit

C

Terry L. Moore P.E., R.L.S.

**MOORE &  
ASSOCIATES**  
CONSULTING ENGINEERS  
inc.

March 14, 2001

Ms. Anita Pritchard, E.I.T.  
Wastewater Design Review Unit  
Arizona Dept. of Environmental Quality  
3033 N. Central Ave.  
Phoenix, AZ 85012

RE: Cambria Subdivision ADEQ File Nos. 20000633, 20000416, 20000419  
20000417, and 20000487

Dear Ms. Pritchard:

As you know, I do all the engineering for Arizona Utility Supply and Services, LLC who owns the Links at Ocotillo wastewater treatment plant.

We are in the process of designing the Cambria wastewater treatment plant which will be submitted to the Aquifer Protection Permit unit on April 2, 2001 for your Department's approval. The design for the expansion for the Links treatment plant has been completed and will be submitted to your office no later than Friday of this week. The corrections to the Cambria lift station have been completed and will also be submitted to your office no later than Friday of this week as well.

All of the parts and equipment are on site for the expansion of the Links WWTP of which Arizona Utility Supply & Services, LLC will start construction of the expansion on March 19, 2001. This facility will be ready to operate when your department issues the Approval to Operate. There is already an existing Aquifer Protection Permit issued (ADEQ No. P102976) for 75,000 gallons per day. A Reuse application has already been filed with your office for approval to re-use the effluent on the golf course adjacent to The Links Estates. The expansion of the Links treatment plant will be ready to operate on Sept. 1, 2001

The basins and equipment for Phase 1 of the Cambria wastewater treatment plant are on the site at this time. Arizona Utility Supply & Services, LLC. will begin fencing the site immediately and will start the installation of the plant with in the next month. With ADEQ's approval, it is anticipated that the first phase of 450,000 gallons per day will be complete by November 1, 2001. Phase 2 of the plant will be complete by January 1, 2002. The balance of the Cambria wastewater treatment plant and the closing of the Links treatment plant should be completed by May, 2002

For your reference, we have enclosed herewith an "Exhibit A" which shows the projected homes closings as supplied by Kip Gilleland of Woodside Homes. That exhibit also shows the anticipated flows coming into the links plant and capacity left while Arizona Utility Supply & Services completes the remaining phases of each plant.

Arizona Utility Supply & Services, LLC is performing daily monitoring of the system. Any time there is a threat to the capacity of the Links treatment plant, Arizona Utility Supply and Services, LLC will notify Woodside Homes to cease any further closings and we will advise your office as well.